



**Inquiry Report made under Section 33 of the Charities and  
Trustee Investment (Scotland) Act 2005**

The Institute for Statecraft, Scottish Charity Number SC040870

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## Executive summary

We opened an inquiry into the Institute for Statecraft ('the charity') on 13 December 2018 because we had received information from the charity and others about data breaches, and concerns about the charity's use of its Twitter feed.

In the course of our inquiry we found that the charity was not meeting the charity test required for continuing registration as a charity in Scotland because:

- its purposes were not entirely charitable
- one of its most significant activities, a project known as the Integrity Initiative, did not provide public benefit in furtherance of the charity's purposes
- private benefit to charity trustees was not incidental to the charity's activities that advance its charitable purposes.

We also found that the charity trustees had breached their trustee duties to act with care and diligence in the interest of the charity, some of them to a serious extent:

- There had been a lack of collective decision-making and recording of decisions by the charity trustees
- The charity trustees had failed to provide effective oversight of the charity's Twitter account, resulting in severe reputational damage to the charity.

Following OSCR's inquiry the charity trustees have taken steps to meet the charity test and to address the governance issues identified in our inquiry. In particular,

- the charity's involvement in the Integrity Initiative has been terminated
- charity trustees are no longer paid for services to the charity
- two of the charity trustees are to stand down and resign
- the charity is making improvements to its governance and processes.

While OSCR has considered taking formal action, we do not consider this to be necessary or proportionate in the light of the actions taken by the charity. OSCR will continue to monitor the charity's activities and governance.

## Background

The Institute for Statecraft is a charity registered with the Scottish Charity Regulator (OSCR). It was incorporated in Scotland as a company on 23 November 2006 and entered on to the Scottish Charity Register on 24 September 2009. The directors of the company are its charity trustees. The charity's purposes include the advancement of education, the advancement of human rights, conflict resolution or reconciliation and the promotion of equality and diversity.

Between 2009 and 2015 the charity pursued a number of programmes both in the UK and overseas. From 2015 the charity began activities for a project concerning disinformation and 'fake news', called the 'Integrity Initiative'. The project involved a number of activities, including funding and publishing research and establishing 'clusters' - networks of experts, opinion formers and policy makers - in different countries. These clusters were tasked with educating national audiences in the threat of disinformation and fake news and strengthening their capacity to respond to it.

From July 2017 the Integrity Initiative began to receive funding from the Foreign and Commonwealth Office, and the FCO agreed funding for a second phase of the Integrity Initiative in June 2018.

In early November 2018 there was a breach of cyber security at the charity and hacked documents were published on the internet. From 3 December 2018 onwards there were media reports concerning the breach, and then about the charity's retweeting of party political material.

On 12 December 2018 the charity submitted a Notifiable Event report to us, in line with our [guidance](#). We also received a number of concerns from third parties.

OSCR opened an inquiry into the charity on 13 December 2018, using our powers under section 28 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act').

## Scope of OSCR's inquiry

Initially, our inquiry focused on the following:

- whether and how the charity's activities, particularly the Integrity Initiative, furthered its charitable purposes
- whether the charity was complying with some of its duties under the 2005 Act – in particular, it appeared that the charity's Principal Office address on the Scottish Charity Register was not up to date and referred to premises no longer in use
- tweets and data losses – in particular, the publication of politically biased material on the charity's Twitter feed and the appearance online of confidential documents purporting to belong to the charity and personal data on individuals.

As the inquiry progressed, further concerns emerged:

- whether or not the charity's purposes as set out in their governing document were entirely charitable
- whether the private benefit to some of the charity trustees was incidental to the charity's activities that advance its purposes
- whether or not the charity trustees had met their general trustee duties to act in the interests of the charity, and in particular to act with the appropriate level of care and diligence.

## Summary of findings

The charity trustees of the charity have cooperated with OSCR through the course of the inquiry and have provided information we have requested, where it was available. We met and teleconferenced with the charity trustees as well as corresponding with them.

In summary, we found that there was evidence both that the charity was failing to meet the charity test set out in the 2005 Act and that the charity trustees had breached their trustee duties, some of them to a serious extent.

## Detailed findings

### 1. Charity test

#### Non-charitable purpose

Under section 7 of the 2005 Act an organisation meets the charity test if

- Its purposes consist only of one or more of the 16 charitable purposes listed in the 2005 Act
- The organisation provides or intends to provide public benefit in Scotland or elsewhere

The following purpose is included in the charity's objects in its governing document:

*'To advance national and international security.'*

This is not a charitable purpose as defined in the 2005 Act. We acknowledge that this was part of the charity's purposes when OSCR entered the charity in the Scottish Charity Register, and we should have previously invited the charity to amend or remove this wording from its objects.

#### Public benefit

We had a number of concerns regarding the Integrity Initiative's provision of public benefit:

##### i. Activities not in furtherance of a charitable purpose

The charity's view was that this project advanced the following charitable purpose:

*'To advance education in the fields of governance and statecraft, and in particular focusing on the leadership, direction, management and administration of public and private institutions, major organisations and other bodies (whether incorporated or otherwise), and the skills needed by those in authority within such institutions, organisations or bodies to enable them to deal effectively with current and future challenges particularly in respect of security.'*

However, we found this difficult to reconcile with statements made by the charity in published documents and to third parties. These statements consistently describe it as being set up to ‘track, expose and counter disinformation and malign influence’, with the initial focus being on the activities of Russia, China and jihadi organisations in this regard.

Disinformation, fake news and other areas of influencing by state actors and others are potentially subject areas in which the advancement of education as a charitable purpose could be furthered. However, the evidence is that the Integrity Initiative served as a means to an end of countering disinformation and malign influence, rather than increasing learning and knowledge of a subject matter among members of the public as an end in itself. We were therefore concerned that the Integrity Initiative, which formed a very significant portion of the charity’s activities, did not further the charity’s charitable purposes and therefore failed to provide public benefit.

**ii. Lack of neutrality**

In addition, our *Meeting the Charity Test* guidance states that:

*‘Where a charity is providing education in respect of a controversial issue it must do so in a way that allows the people being educated to make up their own minds.’*

OSCR’s view is that the Integrity Initiative expressed a particular perspective intended to persuade the public to a specific point of view and, given the nature of the subject matter, it was not sufficiently neutral to advance education.

**iii. Lack of structure**

We were also concerned that some of the Integrity Initiative’s activities were not sufficiently structured to provide public benefit in furtherance of an educational purpose, taking into account our *Meeting the Charity Test* guidance. In particular, we were concerned about the ‘Clusters’ that were set up by the Integrity Initiative in various countries from January 2017 onwards. It is not clear to OSCR that the Clusters’ activities are sufficiently structured and that charity trustees exercise sufficient oversight to show that they further an educational purpose.

We also considered the charity’s use of Twitter. There is no evidence that up to the end of 2018 the Integrity Initiative’s Twitter account was subject to sufficient control or oversight to ensure that it fulfilled an educational purpose or indeed furthered any purpose of the charity.

**iv. Private benefit**

In considering whether a charity is providing public benefit, OSCR is required to consider whether anyone benefits as a private individual other than as a member of the public (private benefit) and how this compares to any benefit to the public the organisation provides. To pass the charity test any private benefit must be incidental to

the organisation's activities that advance its purposes, that is, it must be a necessary result or by-product of the organisation's activities and not an end in itself.

We were concerned at the level of private benefit that a number of the charity's trustees were gaining from the exercise of its functions.

There was no clear explanation as to why the salaries being paid to charity trustees were considered reasonable and necessary, and we had concerns about the charity trustees' decision-making process around these payments. We do not consider that this private benefit was incidental to the organisation's activities that advanced its purposes.

Taking all of these factors into account, we were concerned that the charity no longer met the charity test.

## 2. Charity trustees' compliance with their duties

Section 66 (1) of the 2005 Act requires that charity trustees must:

*Act in the interests of the charity and must:-*

- *seek, in good faith, to ensure that the charity operates in a manner consistent with its purposes;*
- *act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person; and*
- *manage any conflict of interest between the charity and any person or organisation who appoints trustees.*

Section 66 (4) provides that any breach of these duties is to be treated as misconduct in the administration of the charity.

We are concerned that in a number of areas the charity trustees have failed to act with the required level of care and diligence:

### i. Record-keeping

Recording of key decisions and actions of the charity trustees has been poor, and at times appears non-existent. They were unable to produce records of how key decisions were taken, and it is not clear when some of these decisions were made.

We note the charity trustees' explanation that this reflected the small scale of the charity and the fact that all those involved worked closely and informally together. For avoidance of doubt, we regard clear recording of trustee decisions as an obligation on all charities regardless of size. We regard its absence here as evidence of a lack of care and diligence by the charity trustees serving at various times.



ii. **Lack of collective decision-making**

It appears to us that there has been a lack of formal decision-making throughout the life of the charity. Most seriously, there is no evidence that the charity trustees as a whole discussed whether the activities of Integrity Initiative would advance the charity's purposes. Nor were decisions about accepting or seeking funding for the Integrity Initiative discussed formally by the charity trustees. There is evidence of a lack of challenge by some charity trustees.

The evidence of the charity trustees was that decision-making in the charity was informal, certainly up to September 2017 when a number of new trustees were recruited.

There is some evidence that during 2018 the charity trustees recognised that governance and decision-making had to be improved and formalised, and that some progress was made in dealing with this.

There is no evidence that the charity trustees exercised any oversight or effective control over the Integrity Initiative's Twitter account prior to the retweet of a party political comment. They also failed to recognise the risks involved in using social media in this way. While the charity trustees have told us that guidance is now given to staff running the Twitter feed, the previous lack of control by the charity trustees amounted to a failure to act with the appropriate level of care and diligence, which resulted in severe reputational damage to the charity.

Based on the evidence available, we were concerned that the charity trustees had breached their trustee duties, some of them to a serious extent.

## Result of inquiry

We wrote to the charity in August 2019 setting out our interim findings and seeking a response from the charity trustees. Concerning the charity's failure to meet the charity test, we indicated that we might find it necessary to direct the charity to take steps to address the issues, failing which we would remove it from the Scottish Charity Register.

The charity trustees had already applied to OSCR for consent to amend the non-charitable purpose in their governing document described earlier in this report, and we are considering this application.

Following our August 2019 letter, the charity trustees have continued to engage positively with us, and are taking a number of measures:

- the charity has ceased to undertake any activity related to the Integrity Initiative, and this is now undertaken by a non-charitable entity having no legal connection to the charity
- the charity has ceased to remunerate any of its charity trustees
- the charity is taking external guidance on governance
- some charity trustees are to stand down as soon as replacement charity trustees can be identified
- there is an increased degree of oversight of the charity's Twitter feed
- the charity's Principal Office address has been updated on the Scottish Charity Register.

We are content that the charity trustees are taking action to meet the charity test and that formal action about this on OSCR's part is unnecessary.

Breach of charity trustee duties amounts to misconduct, which includes mismanagement. In such a situation, or where a charity's assets are at risk, OSCR can take a number of formal actions in relation to a charity's actions, assets or trustees. We have considered the actions taken by the charity trustees following our interim findings and what this means for the whole picture of risk to the charity, its assets and the wider charity sector. On this basis we consider that formal action by OSCR would not be necessary or proportionate. We will continue to monitor the charity's progress with these actions.

## Learning points for the wider sector

Our inquiry suggests a number of learning points for the sector:

- charity trustees must ensure that any activities the charity proposes to undertake clearly further their charity's purposes and provide [public benefit](#)
- charity trustees must take an active part in making decisions in the charity's interests, and challenge other trustees when they need to: merely deferring to the opinions and decisions of others will make it hard for a charity trustee to fulfil their [trustee duties](#)
- charity trustees should ensure the decisions they have taken are clearly recorded
- charity trustees should ensure decisions on paying charity trustees for services to the charity are taken appropriately in the light of [OSCR guidance](#)
- a charity's social media activities require the same level of care from charity trustees as its other activities – they require to act with the care and diligence that is reasonable to expect of someone who is managing the affairs of another person. This is a higher level of care and diligence than a person would exercise in managing their own personal social media account.

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*Charities you can trust and that provide public benefit*

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